

FINAL PUBLIC REVIEW DRAFT

**INTERGOVERNMENTAL AGREEMENT  
REGARDING JOINT LAND USE PLANNING  
BETWEEN  
THE CITY OF DURANGO, COLORADO AND  
LA PLATA COUNTY, COLORADO**

THIS INTERGOVERNMENTAL AGREEMENT is entered into as of the Effective Date defined below by and among the BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO, whose address is 1060 E. 2<sup>nd</sup> Avenue, Durango, CO 81301 (the “County”), and the CITY OF DURANGO, whose address is 949 E. 2<sup>nd</sup> Avenue, Durango, CO 81301 (the “City”) (collectively, the “parties”).

**RECITALS**

A. The provisions of Section 18 of Article XIV of the Colorado Constitution and C.R.S. § 29-1-203 allow Colorado local governments to cooperate or contract with one another to provide any function, service or facility lawfully authorized to each local government, including, but not limited to, the function of planning or regulating the development of land.

B. C.R.S. § 29-20-105 authorizes and encourages Colorado local governments to cooperate or contract with each other for the purposes of planning and regulating the development of land through the joint adoption of planning, zoning, building, subdivision, and related regulations.

C. The County and the City recognize the mutual benefits and advantages to be obtained for the parties and for the public by cooperatively planning for the future land use and development of certain areas within the County in proximity to the City, and therefore desire to enter into this Agreement to establish standards and procedures for processing land use development applications in such areas.

D. The City and the County are parties to the following intergovernmental agreements and memorandums of agreements (collectively, the “IGAs”) pertaining to or affecting land use development and regulation within the boundaries of the City and/or the County:

(a) Intergovernmental Agreement of October 18, 1983, amended August 1984, pertaining to sewer service;

(b) Memorandum of Understanding of October 18, 1983, amended August 1984, pertaining to sewer service;

## FINAL PUBLIC REVIEW DRAFT

(c) Memorandum of Agreement of December 27, 1983, regarding performance of certain joint planning activities pertaining to sewer service;

(d) Intergovernmental Agreement for Land Use Review in the South Durango Sanitation District Area of August 28, 1984; and

(e) Intergovernmental Agreement for Joint Planning Review Within the Boundaries of the Junction Creek Area Land Use and Development Plan of February 24, 1987.

By this Intergovernmental Agreement, the City and County intend to revoke and terminate the IGAs delineated in subparagraphs (a) through (e) of this paragraph D and replace them with this IGA.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and obligations herein set forth, the parties hereby mutually agree as follows:

### ARTICLE I

#### PURPOSE, SCOPE, TERM AND REVOCATION OF PREVIOUS AGREEMENTS

1.1 Purpose. The purposes of this Agreement are: (1) to provide the framework for coordinated short term and long-range planning efforts that will guide growth in a deliberate and rational pattern within a specified joint planning area within the County and in close proximity to the City; and (2) to ensure that the growth pattern in the Joint Planning Area Map, as defined below, is developed in a manner consistent with the City Comprehensive Plan and infrastructure capabilities; and (3) to coordinate planning efforts between the City and County to ensure that development planned within the City's annexation and utility service area will not unintentionally encroach into areas that the La Plata County Comprehensive Plan designates as having rural densities and land use types.

1.2 Scope. The terms and provisions of this Agreement shall apply to property within the boundaries depicted on the Joint Planning Area Map ("JPAM") attached hereto as Exhibit "A".

1.3 Term. The term of this Agreement commences on the Effective Date and shall remain in effect unless terminated by either party in accordance with Section 8.1 of this Agreement.

1.4 Revocation of IGAs. The City and County hereby revoke and terminate the IGAs referenced in subparagraphs (a) through (e) of recital D except as they may be applicable to Complete Applications as defined in Section 9.1 herein. The IGAs are hereby replaced with this Intergovernmental Agreement.

## FINAL PUBLIC REVIEW DRAFT

### ARTICLE II DEFINITIONS

2.1 Definitions. The following terms when used in this Agreement, unless inconsistent with the context of this Agreement or otherwise defined, shall have the following meanings:

- (a) Applicant shall mean an applicant submitting a Development Application.
- (b) City Development Standards shall mean the standards contained within the Land Use and Development Code of the City of Durango (“LUDC”), and/or the Code of Ordinances of the City of Durango. The term encompasses any amendments, replacements or recodifications of the referenced codes.
- (c) City Land Uses shall mean the land uses set forth within the City’s most recent Comprehensive Plan. The term encompasses any amendments or replacements of the referenced plan.
- (d) County Development Standards shall mean the standards contained within the La Plata County Land Use Code (“LPLUC”). The term encompasses any amendments, replacements or recodifications of the referenced code.
- (e) County Land Uses shall mean the land uses contained within the County’s most recent Comprehensive Plan or District Plans. The term encompasses any amendments, replacements or recodifications of the referenced plans.
- (f) Development Application shall mean:

- (i) for Tier 2, Tier 3, and the Planning Referral Area, a “Development Application” is an application for a land use permit requiring La Plata County Planning Commission review for development in the JPAM and which is submitted after the Effective Date of this Agreement; and

- (ii) for Tier 1, a “Development Application” is an application for a land use permit defined in the LUDC for development in the JPAM and which is submitted after the Effective Date.

- (g) Joint Planning Area Map shall mean the property depicted on the attached Exhibit A, consisting of the following three tiers or sub-areas:

- i. Tier 1. Tier 1 is the Annexation Area and consists of all property in the Joint Planning Area that is immediately abutting, adjoining, or adjacent to or otherwise contiguous with any City boundary and that is eligible for annexation pursuant to the Municipal Annexation Act (C.R.S. § 31-12-101 et seq.).

## FINAL PUBLIC REVIEW DRAFT

ii. Tier 2. The Tier 2 Area consists of property in the Joint Planning Area that is indicated as “Tier 2” on the JPAM and generally includes those unincorporated lands designated by the City’s Comprehensive Plan which are not presently eligible for annexation but are eligible for City water and/or sewer service and for which all development or redevelopment shall be in accordance with applicable City Development Standards and City Land Uses. The Tier 2 area also includes all properties to which the extension of City water and or sewer has been formally authorized by the City.

iii. Tier 3. The Tier 3 Area consists of property in the Joint Planning Area that is indicated as “Tier 3” on the JPAM and generally includes those unincorporated lands designated by the City’s Comprehensive Plan as eligible for City water and/or sewer service, but for which only select City development standards, as identified in Section 4.1(c) herein, are to be applied to development or redevelopment. If such properties are subsequently annexed, development shall be required to meet all applicable City standards. Tier 3 development shall also be required to be consistent with any Land Use Classifications contained within any land use classification map applicable to Tier 3 property that has been adopted by both the City and the County either prior to or following adoption of this IGA. Animas Valley Land Use Plan (“AVLUP”) land use classifications shall be applicable to development of properties identified as being within the AVLUP.

(h) Joint Planning Commission shall mean a body of planning commissioners from both the City and the County, as more specifically defined in Section 5.3 of this Agreement.

(i) Planning Referral Area. The Planning Referral Area consists of all properties not within the City of Durango’s Comprehensive Plan Urbanizing Boundary or the JPAM and that are otherwise not identified as being within Tier 1, 2 or 3 areas, but which are within the three mile referral area as prescribed by State Statutes.

(j) Private Central Water and Sewer shall meet the definitions of community water and community sewer as set forth by the Colorado Department of Public Health.

## ARTICLE III ANNEXATION

## FINAL PUBLIC REVIEW DRAFT

3.1 Process of Annexation. The City and County acknowledge that annexation will generally not occur until such time that a request for annexation is made by a property owner. This IGA is intended to foster cooperation and coordination between the City and County in the orderly process of annexation requests by property owners.

### 3.2 City Annexation of County Roads and Impacts of Municipal Development.

With respect to the issues of annexation of County roads and the impacts of municipal development adjacent to such roads and to other County roads, the parties agree as follows:

a. The City agrees that it will, within a reasonable timeframe, initiate annexation of the following sections of County roadways:

1. Florida Road (C.R. 240) extending from 3rd Avenue to the City boundaries;
2. 32nd Street (C.R. 251) from the current City limit to East Animas Road (C.R. 250); and
3. Goeglein Gulch Road (C.R. 238) to its full extent from 8th Avenue to North College Drive.

b. The City agrees that it will annex abutting County roadways when annexation occurs, as required by State law.

c. The City agrees that it will assume maintenance responsibilities for county roads which it annexes, unless otherwise agreed by the Parties hereto. It is understood and agreed that this Agreement does not affect the terms and obligations of the Intergovernmental Agreement for Improvements to Goeglien Gulch (County Road 238) and for Transfer of Jurisdiction as entered into by the parties hereto on March 8, 2000.

d. The City agrees that in conjunction with the review and approval of proposed annexation and development of properties adjacent to the existing City limits, it will, when legally possible, annex County roadways that serve as the principal access from the City to such development.

e. The City and the County agree to consult and cooperate in assessing and requiring new development, whether in the City or the County, to mitigate impacts resulting from such development.

3.3 County Review of Annexations. The City shall have annexation impact reports prepared and delivered to the County on all annexation requests concerning properties greater

## FINAL PUBLIC REVIEW DRAFT

than 10 acres in size in the Joint Planning Area unless this requirement is waived in writing by the County Director of Community Development, following consultation with the City Director of Planning and Community Development.

### **ARTICLE IV JOINT PLANNING**

4.1 Development Standards and Land uses. The following development standards shall be applied to Development Applications as follows:

(a) Tier 1 Area. For properties in Tier 1, new land use development shall be initiated by and through an annexation request to the City. To that end, the County agrees to not accept Development Applications for properties in the Tier 1 Area and to direct such Applicants to the City planning staff for an annexation request. Upon receipt of an annexation request for property located in Tier 1, the City agrees to consider the annexation request in accordance with all applicable regulations and criteria. The County will accept a Development Application for properties in the Tier 1 area only if it has received written confirmation from the City that (1) the property is ineligible for annexation, (2) that the City does not presently desire to annex the property, (3) that the annexation is denied or (4) that annexation efforts have failed. Annexation efforts shall be deemed to have failed if an annexation agreement has not been executed and recorded by the Applicant within 365 days of the first reading of the annexation ordinance. If the County accepts a Development Application for development in Tier 1, the development application shall be processed as a Tier 2 project and shall meet all City Development Standards and Land Uses.

(b) Tier 2 Area. For properties in Tier 2, the Applicant shall submit its Development Application to the City Staff for processing in accordance with Article V. To obtain development approval, the Applicant shall be required to establish that the proposed development meets all City Development Standards and Land Uses, and the Applicant must pay County review fees, applicable County impact fees, and all applicable City fees. Development on Tier 2 properties may qualify for and/or be subject to Fair Share Reimbursement Agreement provisions as set forth in the La Plata County Code. Application of City Development Standards may be waived or varied by the Joint Planning Commission in accordance with the variance criteria set forth in Section 5.7. Changes to Land Use must be processed as an amendment to the City Comprehensive Plan.

(c) Tier 3 Area. For properties in Tier 3, the Applicant shall submit its Development Application to the County staff for processing in accordance with Article V. The Applicant shall be required to establish that the proposed development meets the following specific City Development Standards – parking, signage, landscaping, lighting, right-of-way dedication, and the adopted City Building Code and the Commercial Use

## FINAL PUBLIC REVIEW DRAFT

Design Guidelines – and all County Development Standards that do not conflict with the above-referenced City Development Standards. If a conflict exists between a specific City Development Standard and a County Development Standard, the stricter standard shall govern. Further, the Applicant will pay County review fees, applicable County impact fees, and all applicable City fees. Development on Tier 3 properties may qualify for and/or be subject to Fair Share Reimbursement Agreement provisions as set forth in the La Plata County Code. Except for properties located within the AVLUP, the Applicant shall also be required to establish that the proposed development meets applicable City Land Uses. Development of properties located within the AVLUP shall be governed by the AVLUP land use classifications and not the City Land Uses. Application of these specific City Development Standards and fees may be waived by the Joint Planning Commission in accordance with the variance criteria set forth in Section 5.7. Any variance from applicable County development standards must be submitted to the County Board of Adjustment, as required by State law. Any such submittal and the resulting determination by the Board of Adjustment shall precede review of the proposed project by the Joint Planning Commission.

(d) Planning Referral Area. For properties in the Planning Referral area, new land use development shall be reviewed and approved by La Plata County through application of the LPLUC. The application for development shall be referred to the City for review and comments and any comments shall be considered by the County in its deliberation on the Development Application.

(e) Consensual Annexation. This IGA does not affect the rights of owners of property located within the JPAM or otherwise to request annexation into the City of Durango by an annexation petition.

## ARTICLE V JOINT PLANNING REVIEW, PROCESS AND STANDARDS

5.1 Application Processing. The City planning staff shall initially receive and process all Development Applications regarding properties in the Tier 1 Area. The County planning staff shall initially receive and process all other Development Applications regarding properties in Tier 2 and Tier 3. All Tier 2 Development Applications shall be reviewed by City staff for plan consistency and compliance with City Development Standards. All Tier 3 and Planning Referral Area Development Applications shall be referred to the City planning staff for review and comment.

5.2 Application Review. All Development Applications for development in Tier 2 and Tier 3 shall be reviewed and either continued, approved, denied, or conditionally approved by the Joint Planning Commission at a duly noticed public meeting.



## FINAL PUBLIC REVIEW DRAFT

5.3 Joint Planning Commission. The Joint Planning Commission (“JPC”) shall consist of six (6) members, three of whom shall be current members of the City Planning Commission and three of whom shall be current members of the County Planning Commission. The City and County shall specifically designate which 3 members of their respective planning commissions shall also serve as members of the JPC. Four (4) members of the JPC shall constitute a quorum for the transaction of business by the Joint Planning Commission. If a quorum is present, the decision of one or more members of the Joint Planning Commission to abstain from voting thereon shall not be deemed to constitute less than a quorum for the transaction of business. Action of the Joint Planning Commission shall be by majority vote of those voting at a meeting at which a quorum is present. A tie vote constitutes a denial of an application by the Joint Planning Commission.

5.4 Call-Up By Applicant, BOCC and City. Actions by the Joint Planning Commission are subject to a “call-up” hearing before the Board of County Commissioners. The “call-up” period shall be the twenty (20) calendar-day period following action by the Joint Planning Commission. During the “call-up” period, the Applicant, an Eligible Citizen, the City, and/or the Board of County Commissioners may request a review of the Joint Planning Commission’s action by submitting a written request to the County Director of Community Development. An Eligible Citizen is one who was entitled to receive notice of the Development Application pursuant to applicable regulations. For purposes of a City and/or County “call-up,” a “call up” may be initiated by a quorum of the appropriate governmental entity or by any individual member thereof. If called up, the Joint Planning Commission’s action shall be reviewed at the next Board of County Commissioners meeting for which appropriate notice can be given. At the “call-up” hearing, the Board of County Commissioners shall conduct a De Novo review of the Development Application and may either continue the project, approve the project, conditionally approve the project, deny the project or remand the project to the Joint Planning Commission for further consideration.

5.5 Final Action on Development Application. A “Final Action” on any Development Application shall consist of either:

(a) The Joint Planning Commission’s action to approve, deny, or conditionally approve the Development Application and the expiration of the twenty (20) day “call-up” period without a call-up to the BOCC; or

(b) The BOCC’s final decision on a Development Application following its review of the Joint Planning Commission’s action pursuant to Section 5.4 of this Agreement.

5.6 Appeals.

(a) Appeal of Final Action. An Applicant must call-up the action of the Joint Planning Commission for review by the Board of County Commissioners as a condition



## FINAL PUBLIC REVIEW DRAFT

precedent to an appeal to the District Court. An Applicant aggrieved by the Final Action of the Board of Commissioners following a call-up review may appeal to the La Plata County District Court of the State of Colorado under Rule 106 of the Colorado Rules of Civil Procedure. Any person with standing may appeal a Final Action of the Joint Planning Commission or the Board of County Commissioners to the La Plata County District Court of the State of Colorado under Rule 106 of the Colorado Rules of Civil Procedure.

(b) Appeal of Interpretations. Appeals or requests for interpretations of the application of this IGA or the Joint Planning Area standards or map shall initially be made jointly to the County Director of Community Development and the City Director of Planning and Community Development. If the Directors cannot uniformly agree upon an interpretation, or if the appealing party is aggrieved by the interpretation of the Directors, the appealing party may then appeal such interpretation within twenty (20) days of such action to the Joint Planning Commission. Any Applicant aggrieved by the Final Action of the Joint Planning Commission may then call-up such action to the Board of County Commissioners pursuant to Section 5.4. Following such call-up review, the Applicant may appeal such action to the La Plata County District Court of the State of Colorado under Rule 106 of the Colorado Rules of Civil Procedure.

5.7 Waiver and Variances. An Applicant may request a waiver or a variance from the application of the applicable County Development Standards within the Joint Planning Area to the La Plata County Board of Adjustment. A waiver or variance of the applicable County Development Standards may be granted if all the variance criteria within the LPLUC are met. An Applicant may request a waiver or a variance from the application of the applicable City Development Standards within the Joint Planning Area to the Joint Planning Commission, based upon the criteria listed below. A waiver or variance of the applicable City Development Standards may be granted if the granting of the waiver or variance will not be detrimental to the public safety, health, or welfare or injurious to other property and meets either all the criteria under subsection 1 or all the criteria under subsection 2 as set forth below:

1. A. There are special circumstances or conditions which apply to the subject property that do not generally apply to other property within the JPAM; and  
B. The special circumstances and conditions have not resulted from any act of the applicant that results in circumvention of the development standards applicable in the JPAM;

OR

2. A. The granting of the waiver or variance allows a creative and positive development solution and the variance will not adversely affect the intent and purpose of the Development Standards, the JPAM or the IGA; and

## FINAL PUBLIC REVIEW DRAFT

B. The granting of the waiver or variance is found to be consistent with the purposes of the IGA.

A waiver or variance is not necessary for Development Applications seeking either a Planned Development or a Planned Unit Development under the respective City and County Codes.

### ARTICLE VI IMPLEMENTATION

#### 6.1 Code Amendments.

- (a) In order to implement the terms of this Agreement, the County agrees to amend the LPLUC as follows:
  - (i) to establish a policy opposed to the formation of water districts or water companies that serve Tier 2 or Tier 3 areas as reflected on the Joint Planning Area Map; and
  - (ii) to adopt the City's Grandview Area Plan as the governing Land Use plan for real property located within the Grandview Area Plan.
- (b) In order to implement the terms of this Agreement, the City and County agree to amend their respective Codes to incorporate the following agreed upon provision:

Development proposals in Tier 2 and 3 shall be precluded from being served by private central water and/or private central sewer utilities ("Private Centrally Served Development") with the following exception. A proposal for Private Centrally Served Development shall be referred to the City to allow the City to consider whether it will agree to provide water service for the proposed development. The City shall be under no obligation to agree to provide water service to the proposed development. If the City decides, in its sole discretion, to provide water service, the City and County agree that conditions of such provision of service shall be (1) that the property owner or developer is solely responsible for the extension of water service and pipelines to the parcel to be developed, which lines shall be adequately sized, as determined and approved by the City and (2) that the development complies with City Development Standards and Land Uses. If the City decides, in its sole discretion, to not provide water service to the proposed development, then the development shall be entitled to develop using private

## FINAL PUBLIC REVIEW DRAFT

central water and/or private central sewer utilities provided the development meets all applicable development standards under the applicable Tier 2 or 3 review processes set forth herein.

(c) The City agrees that it shall not amend its definition of or its boundaries for the “Urbanizing Area” as set forth in the City’s Comprehensive Plan without affording the County notice and an opportunity to comment on such amendments.

(d) The City and County shall adopt the IGA and the JPAM. Once adopted, revisions to the map shall not be needed upon annexation of properties into the City. The City and County shall administratively account for instances where Tier 2 property converts to Tier 1 property because of an annexation of contiguous Tier 1 property. Any amendments to the boundaries of the Tier 3 area or to a proposed change of Tier 3 property to Tier 2 status (other than changes requested by the property owner) ) shall be reviewed and approved by the City and the County, following a recommendation by the Joint Planning Commission.

6.2 Long-Range Planning. The County and the City agree to coordinate and negotiate in good faith concerning long-range planning efforts. To this end, the City and County agree to work together on alternative growth management tools, including but not limited to, transferable development rights, design guidelines, transportation, impact fees, and open space and agricultural preservation initiatives.

6.3 Enforcement and Legal Defense. Failure to obtain an appropriate land use permit or to develop in accordance with the terms of this IGA shall constitute a violation of the LUDC and/or the LPLUC and all enforcement remedies contained therein shall be applicable. The County and the City agree to share equally in the costs of defending or enforcing any Final Action made in accordance with and pursuant to the terms of this Agreement.

6.4 Procedural Guidelines. The Joint Planning Commission shall adopt all necessary procedural guidelines to implement the terms of this IGA.

## ARTICLE VII AGREEMENT UPDATE AND REVIEW

7.0 The parties shall meet on or about the one year anniversary of this Agreement to review this Agreement and to negotiate in good faith any changes or updates to the Agreement requested by either party. Following that initial review, the parties shall meet not less often than every five (5) years thereafter to review this Agreement and to negotiate in good faith any changes or updates to the Agreement requested by either party. Failure to meet pursuant to the terms of this section shall not invalidate this IGA.

## FINAL PUBLIC REVIEW DRAFT

### ARTICLE VIII TERMINATION AND AMENDMENT

8.1 Termination of Participation. Either party may terminate its participation in this Agreement as of the end of any calendar year by giving at least one hundred eighty (180) days' written notice to the other parties provided that such withdrawing party shall pay all of its obligations hereunder or any effective funding agreement to the effective date of the termination of its participation. If this Agreement is terminated, pending Development Applications, except for applications for annexation, shall be processed in accordance with applicable County Development Standards.

8.2 Amendment. This Agreement may be amended or supplemented only by an instrument in writing executed by both parties to this Agreement.

### ARTICLE IX GENERAL PROVISIONS

9.1 Effective Date; Applicability. The Effective Date of this Agreement shall be the date of the last party to sign. This Agreement shall not apply to a Development Application that was considered complete under applicable LPLUC and/or LUDC criteria prior to the Effective Date ("Complete Application"). Any such Complete Application shall be processed in accordance with applicable County Development Standards or, for property subject to the IGAs referenced in Recital D hereto, in accordance with the applicable provisions of the IGAs. This Agreement shall also not apply to the processing of preliminary plats and final plats for land use development based upon and consistent with a valid Conceptual Development Plan which was approved prior to the Effective Date of this Agreement. Such development shall proceed in accordance with the County Development Standards in place at the time of the approval of the Conceptual Development Plan. This Agreement shall apply to all other Development Applications which have not been approved as of the Effective Date by the County, City and/or the present Joint Planning Commission.

9.2 Entire Agreement. This Agreement embodies the entire agreement between the parties regarding the subject matter herein and supersedes all prior agreements and understandings, if any.

9.3 Interpretation. Subject only to the express limitations set forth herein, this Agreement shall be liberally construed to permit the parties to exercise all powers that may be exercised by them with respect to the subject matter of this Agreement and pursuant to applicable law.

9.4 No Third Party Beneficiaries. The parties to this Agreement do not intend to benefit any person not a party to this Agreement. No person or entity, other than the parties to

FINAL PUBLIC REVIEW DRAFT

this Agreement, shall have any right, legal or equitable, to enforce any provision of this Agreement.

9.5 Signatory Authority. Each person signing this Agreement in a representative capacity, expressly represents the signatory has the subject party's authority to so sign and that the subject party will be bound by the signatory's execution of this Agreement. Each party expressly represents that except as to the approval specifically required by this Agreement, such party does not require any third party's consent to enter into this Agreement.

9.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one original Agreement.

9.7 Severability. If any term or provision of this Agreement shall be adjudicated to be invalid, illegal or unenforceable, this Agreement shall be deemed amended to delete therefrom the term or provision thus adjudicated to be invalid, illegal or unenforceable and the validity of the other terms and provisions of this Agreement shall not be affected thereby.

9.8 Notices. Except as otherwise provided in this Agreement, all notices or other communications by any party hereto shall be in writing; shall be sufficiently given and shall be deemed given when actually received.

[SIGNATURE PAGE FOLLOWS]

FINAL PUBLIC REVIEW DRAFT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year set forth below.

AGREED:

(SEAL)

BOARD OF COUNTY COMMISSIONERS  
LA PLATA COUNTY, COLORADO

\_\_\_\_\_  
Deputy Clerk to the Board

\_\_\_\_\_, Chairperson  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
County Attorney

CITY OF DURANGO, COLORADO

(SEAL)

\_\_\_\_\_

\_\_\_\_\_, Mayor  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

FINAL PUBLIC REVIEW DRAFT

## EXHIBIT A

### Joint Planning Area Map

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